IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/03/2004

CORAM

THE HON'BLE MR. JUSTICE P.D.DINAKARAN

W.P.No.16278 of 1999
and W.P.Nos.18011 of 2000,
34486 and 39872 of 2002

W.P.No.16278 of 1999

A.Ananthy,
W/o. T. Jose Titus,
Payanam,
Martandam Post,
Kanyakumari District. .....Petitioner

- Vs -

1. The Director,
Directorate of Collegiate Education,
Chennai - 600 006.

2. The Joint Director,
Directorate of Collegiate Education,
Tirunelveli,
Nellai Kattabomman District.

3. The Registrar,
Manonmanium Sundaranar University,
Tirunelveli.

4. The Correspondent / Secretary,
Scoot Christian College,
Nagercoil,
Kanyakumari District. .....Respondents

W.P.No. 18011 of 2000

Dr. M.G.Vincely Jebakar,
S/o. Mr. M. Gnanadhas,
Kodumkulam,
Marthandam Post,
K.K.District. .....Petitioner
- Vs -
1. The State of Tamil Nadu,
rep. by the Secretary to

Government,
Education Department,
Fort. St. George,
Chennai - 600 009.

2. The Joint Director of Collegiate
Education,
Tirunelveli Region,
Murugankurichi,
Tirunelveli.

3. The Correspondent & Secretary,
Scott Christian College,
Nagercoil.

4. P. Sundararaj,
Kottoor,
Cherupaloor P.O.
Kanyakumari District. .....Respondents

W.P.No.34486 of 2002

A.Ananthy,
W/o. T. Jose Titus,
Payanam,
Martandam Post,
Kanyakumari District. .....Petitioner

- Vs -

1. The Director,
Directorate of Collegiate Education,
Chennai - 600 006.

2. The Joint Director,
Directorate of Collegiate Education,
Tirunelveli,
Nellai Kattabomman District.

3. Scoot Christian College,
rep. by its Correspondent and Secretary,
Nagercoil,
Kanyakumari District.

4. P. Sundararaj,
Kottoor,
Cherupaloor P.O.
Kanyakumari District.

5. Dr. M.G.Vincely Jebakar,
S/o. Mr. M. Gnanadhas,
Kodumkulam,
Marthandam Post,
K.K.District.

6. Dr. D. Peter,
No.33, B/2, Water Tank Road,
Nagercoil.

7. Dr. T. James Jeyasingh,
"Angel Apartment",
27/3, 99, A-8
South Weavers Colony,
Nagercoil 629 003.

8. Mr. P.Dharmaraj,
(Former Correspondent of
Scoot Christian College)
Advocate,
"Raj Bhavan" Joshua Street,
Nagercoil. .....Respondents

W.P.No.39872 of 2002

Dr. M.G.Vincely Jebakar,
S/o. Mr. M. Gnanadhas,
Kodumkulam,
Marthandam Post,
K.K.District. .....Petitioner

- Vs -

1. The Director,
Directorate of Collegiate Education,
Chennai - 600 006.

2. The Joint Director,
Directorate of Collegiate Education,
Tirunelveli,
Nellai Kattabomman District.

3. Scoot Christian College,
rep. by its Correspondent and Secretary,
Nagercoil,
Kanyakumari District.

4. P. Sundararaj,
Kottoor,
Cherupaloor P.O.
Kanyakumari District.

5. A.Ananthy,
W/o. Mr. T. Jose Titus,
Thanga Vilas, Nedutheru,
Karungal Post
Kanyakumari District. .....Respondents

Writ Petitions, under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, Writ of Mandamus and Writ of Certiorarified Mandamus respectively, as stated therein.

For Petitioners :: Mr. C. Russal Raj in
W.P.No.16278 of 1999

Mr. K. Chandru
Senior Counsel for
Mr. R. Yashod Vardhan in
W.P.No.18011 of 2000

Mr. Ramkumar for
Mr. V. Prakash in
W.P.No.34486 of 2002

Mr. K. Chandru
Senior Counsel for
Mr. R. Vijayakumar in
W.P.No.39872 of 2002

For Respondents :: Mr. M.S.Palanisamy
Additional Government Pleader
for R-1 and 2 in all W.Ps

Mr. T.S.Sivagnanam for R-3 in
W.P.Nos.34486, 39872 of 2002

Mr. P.Peppin Fernando for R-4
in W.P.Nos.18011 of 2000 and
34486, 39872 of 2002

Mr. Ramkumar for
Mr. V. Prakash for R-5 in
W.P.No.39872 of 2002

Mr.N.Paulvasantha Kumar for R8
in W.P.No.34486 of 2002

Mr. K. Chandru
Senior Counsel for
Mr. R. Yashod Vardhan for R-5
in W.P.No.34486 of 2002

Mr. K. Chandru
Senior Counsel for
Mr. R. Vijayakumar for R-6&7in
W.P.No.34486 of 2002

Mr. M. Muthupandian for R-3
in W.P.No.18011 of 2000

Mr. M.P.Subbiah for
M/s. Row and Reddy for R-3 in
W.P.No.16278 of 1999

Mr. M.L. Dennis for R-4
in W.P.No.16278 of 1999

:C O M M O N O R D E R

While W.P.Nos.16278 of 1999 and 34486 of 2002 were filed by Ms.A. Ananthy, the other two writ petitions in W.P.Nos.18011 of 2000 and 3987 2 of 2002 were filed by Dr. M.G.Vincely Jebakar.

2. In W.P.No.16278 of 1999, the petitioner therein seeks issuance of a Writ of Mandamus, to direct the second respondent / Joint Director, Directorate of Collegiate Education, Tirunelveli to issue the monthly salary fixed by the first respondent from the date of her appointment viz., 29.10.1997 as Lecturer in Economics Department in Scott Christian College, Nagercoil (hereinafter referred to as the College), which was denied for want of approval of her appointment.
3. Dr. M.G.Vincely Jebakar (in brevity Jebakar) has filed W.P.No.1 8011 of 2000, for issuance of a Writ of Certiorarified Mandamus to call for the proceedings of the second respondent / Joint Director of Collegiate Education dated 04.04.2000, refusing to approve his appointment as Lecturer in the College in Economics Department with effect from 22.06.1998 in the vacancy which arose due to the retirement of one Mr. V. Cruz Viagappa Ratnam and to quash the same and also to direct the second respondent to sanction the salary with effect from 03.0 8.1999 with consequential benefits.

4. As against the order of the Secretary of the College, appointing one Mr.P.Sundararaj as Lecturer in Economics Department with retrospective effect from 01.10.1997 in the vacancy caused due to the retirement of Dr. D. Peter, Ms.Ananthy filed W.P.No.34486 of 2002 for issuance of a Writ of Certiorari to call for the records and to quash the same and also to direct respondents 1 and 2 to approve the appointment of the petitioner as a permanent lecturer with effect from 29.10.1 997, appointed in the vacancy caused due to the retirement of Dr.D. Peter.

5. Similarly, in W.P.No.39872 of 2002, Mr. Jebakar prayed for issuance of a Writ of Certiorarified Mandamus to call for the records of the Secretary of the College, appointing one Mr. P.Sundararaj as Lecturer in Economics Department with retrospective effect from 01.10.1997 in the place of Dr. D. Peter and to quash the same and also for a direction to approve his

appointment as a permanent lecturer with effect from 22.06.1998, appointed in the vacancy caused due to the retirement of Dr.V.C.Ratnam and a further direction for disbursement of salary to him.

6. In nutshell, the admitted facts, which led to the filing of these writ petitions are as follows:-

6.1. The Management of Scott College by resolution dated 10.07.1989 resolved that if any person was selected by the Governing Body and worked for a period of one month or more, he or she would be considered for the next permanent vacancy in the Department.

6.2. The Secretary of the College, by order dated 02.09.1993 temporarily appointed Mr.P.Sundararaj as Lecturer in the College in Economics Department with effect from 03.09.1993 in the leave vacancy.

6.3. When a permanent vacancy arose due to the retirement of one Dr.D.Peter, based on the resolution of the college dated 10.07.1989, Mr.P.Sundararaj claimed that he should be appointed in the place of Dr.D.Peter.

6.4. Accordingly, Mr.P.Sundararaj filed a writ petition before this Court in W.P.No.3431 of 1997 for issuance of a Writ of Mandamus, forbearing the first respondent herein from removing his name from the list of selected candidates for appointment or from passing any other adverse order in any manner whatsoever contrary to the well established Rules and Regulations. This Court by an order dated 17.04.1997 made in W.P.No.3431 of 1997 directed the first respondent therein to consider the case of Mr.P.Sundararaj for appointment for the post of Lecturer in the Department of Economics.

6.5. But, in view of the adverse report of the Principal of the College regarding indecent behaviour of Mr.P.Sundararaj, he was not considered and called for the interview and the Governing Body of the College in the meeting held on 28.10.1997 resolved to ratify the action of the Correspondent, in not considering the application of Mr.P. Sundararaj for interview. Admittedly, the resolution of the Governing Body of the College was never challenged by Mr.P.Sundararaj.

6.6. Thereafter, the Governing Body of the College, after holding an interview of all the qualified teachers, by proceedings dated 28.10 .1997 appointed Ms.Ananthy as Lecturer in Economics Department with effect from 29.10.1997 in the vacancy caused due to the retirement of Dr.D.Peter.

6.7. Similarly, when another vacancy arose due to the retirement of Mr. V. Cruz Viagappa Retnam, the Secretary of the College, by proceedings dated 08.06.1998 appointed Mr. Jebakar as Lecturer in Economics Department with effect from 22.06.1998.

6.8 The fact remains that the appointment orders dated 28.10.1997 and 08.06.1998, appointing Ms.Ananthy and Mr.Jebakar as Lecturers

in Economics Department of the College were not challenged by Mr.P. Sundararaj.

6.9. Even though Mr.P.Sundararaj filed a suit in O.S.No.754 of 1998 on the file of Principal District Munsif, Nagercoil for declaring that the appointments of Ms.Ananthy, Mr.Jebakar and one Gnanadhas are null and void, the said suit was subsequently withdrawn.

6.10. Since the salary to Ms.Ananthy was not paid during the pendency of the suit filed by Mr.P.Sundararaj in O.S.No.754 of 1998, she was constrained to file W.P.No.16278 of 1999, as prayed for.

6.11. Similarly, when the Joint Director of Collegiate Education refused to approve the appointment of Jebakar, citing the pendency of the suit in O.S.No.754 of 1998 on the file of Principal District Munsif, Nagercoil preferred by Mr.P.Sundararaj, Mr. Jebakar filed W.P.No.1 8011 of 2000, as prayed for.

6.12. It is true that Mr.P.Sundararaj filed a writ petition in W.P.No.12253 of 1996 for issuance of a Writ of Mandamus, for a direction to the first respondent to select him for the post of Lecturer in any one of the department under his control in the existing or ensuing vacancies under due

process of law with reference to the waiting list on the basis of due order or eligibility or according to the standing instructions. But, the said writ petition was also subsequently withdrawn by Mr.P.Sundararaj on 01.12.1997.

6.13. When the writ petitions in W.P.Nos.16278 of 1999 and 18011 of 2000, filed by Ms.Ananthy and Mr. Jebakar were thus pending, one more vacancy in the post of Lecturer in the Department of Economics arose due to the retirement of Mr. Linson Mark with effect from 28.02.200 1.

6.14. The Secretary of the College, by proceedings dated 31.07.2000 appointed Mr.P.Sundararaj as Lecturer in Economics Department giving retrospective effect from 01.10.1997, in the vacancy due to the retirement of Dr.D.Peter. The proceedings of the Secretary of the College dated 31.07.2000 reads as follows:-

"To:
Mr. P. Sundararaj
Kottor,
Cheruppaloor Post,
Kanyakumari District.
Appointment Order
Ref: Hon.High Court Order W.P.No.3431/1997 &
W.M.P.No.5764 of 1997 dated 17.04.1997.

As per the Hon'ble High Court order cited above, Mr.P.Sundararaj is appointed as lecturer in Economics in this College with retrospective effect from 01.10.1997 in the place of Dr.D.Peter, who retired

on 3 0.09.1997 in the scale of pay 8000-275-13500 with the usual allowances permissible under the rules and according to the terms and conditions stipulated by the College in Form 7B.

Sd/-

Secretary"

6.15. Concededly, while passing the order of appointment of Mr.P. Sundararaj by proceedings dated 31.07.2000, neither the services of Ms.Ananthy nor that of Mr.Jebakar were terminated.

6.16. Based on the appointment order dated 31.07.2000, Mr.P. Sundararaj again filed a writ petition in W.P.No.1984 of 2001 seeking for writ of mandamus, forbearing the respondents from discharging his duties as Lecturer in the Department of Economics, even without impleading either Ms.Ananthy or Mr. Jebakar as party respondents in the said writ petition.

6.17. This Court, by an order dated 02.02.2001 made in W.P.No.1984 of 2001, of course, taking note of the earlier order dated 17.04.1997 passed by this Court in W.P.No.3431 of 1997 clarified that since Mr.P.Sundararaj had already been appointed as Lecturer in Economics Department and had assumed office by virtue of the direction of this Court, he should be allowed to function as Lecturer, otherwise, he is entitled to avail the other remedy that is open to him to challenge the action of the third respondent in the manner known to law.

6.18. Aggrieved by the order of the Secretary of the College, appointing Mr.P.Sundararaj, as Lecturer in Economics Department with retrospective effect from 01.10.1997 in the vacancy caused due to the retirement of Dr. D. Peter, Ms. Ananthy filed W.P.No.34486 of 2002 as prayed for and Mr. Jebakar filed W.P.No.39872 of 2002 as prayed for.

7.1. Mr. K. Chandru, learned Senior Counsel appearing for the petitioners in W.P.No.18011 of 2000 and W.P.Nos.39872 of 2002, on the admitted facts referred to above, contends that Mr. P. Sundrararaj cannot be appointed as Lecturer in Economics Department, by giving retrospective effect from 01.10.1997, particularly when he had withdrawn the suit in O.S.No.754 of

1998 on the file of Principal District Munsif, Nagercoil challenging the appointments of Ms.Ananthy and Mr. Jebakar and also withdrawn W.P.No.12253 of 1996 , seeking writ of mandamus to consider him for the post of lecturer.

7.2. Mr. K.Chandru, learned Senior Counsel further contends that sanctioning of salary to Mr.P.Sundararaj by the Joint Director of Collegiate Education for the period of 1 + months during leave vacancy of Mr. T. James Jeyasingh cannot be construed as a permanent vacancy.

7.3. Even assuming that Mr.P.Sundararaj has got any right based on the resolution dated 10.07.1989, the same is not binding on the petitioners in the above writ petitions, particularly when the case of

Mr.P.Sundararaj was refused to be considered by the College along with the case of Ms.Ananthy due to the conduct of Mr.P.Sundararaj.

7.4. Learned counsel also contends that even while disposing of the writ petition filed by Mr.P.Sundararaj in W.P.No.3431 of 1997, this Court by order dated 17.04.1997 only directed the first respondent to consider the case of the petitioner for appointment for the post of Lecturer in the Department of Economics and therefore, the same cannot confer any right on the petitioner.

7.5. Similarly, this Court by order dated 02.02.2001 made in W.P. No.1984 of 2001, while refusing to grant any order in favour of Mr. P. Sundararaj, made it clear that if he was not allowed to function as lecturer he would be entitled to avail the other remedy that is open to him. Hence, the proceedings of the Joint Director of Collegiate Education dated 04.04.2000, refusing to approve the appointment of Mr. Jebakar, citing the pendency of the writ petitions filed by Ms. Ananthy and Mr. P.Sundararaj is not valid in law.

7.6. In any event, Mr.P.Sundararaj cannot be appointed as Lecturer in Economics Department, giving retrospective effect from 01.10.1997 when he never worked physically from 1997, ignoring the right conferred on Ms.Ananthy and Mr. Jebakar, based on the appointment orders dated 28.10.1997 and 08.06.1998 in the vacancy caused due to the retirement of Mr. D. Peter and Mr. V. Cruz Viagappa Retnam.

8. Mr. Russal Raj, learned counsel appearing for the petitioner in W.P.No.16278 of 1999, Mr. Ramkumar, learned counsel appearing for the petitioner in W.P.No.34486 of 2002 adopt the arguments of Mr. K. Chandru, learned Senior Counsel appearing for the petitioners in W.P. No.18011 of 2000 and W.P.Nos.39872 of 2002.

9. Per contra, Mr. T.S. Sivagnanam appearing for the College authorities, placing the undisputed facts referred to above submits that the order of seniority among Ms.Ananthy and Mr.Jebakar was fixed purely based on the order dated 17.04.1997 passed by this Court in W.P.No.3 431 of 1997.

10. Mr. P.Peppin Fernando, learned counsel appearing for Mr.P. Sundararaj submits that Mr.P.Sundararaj was constrained to withdraw the suit in O.S.No.754 of 1998 on the file of Principal District Munsif, Nagercoil as well as W.P.No.12253 of 1996 only on the understanding with the college that they would consider his case if he withdrew the said cases.

11. Mr. Paul Vasantha Kumar, learned counsel appearing for R-8 in W.P.No.34486 of 2002 submits that the fixation of seniority among the parties has to be done based on the date of entry into service.

12. I have given careful consideration to the submissions of all the parties.

13. When the suit is admittedly withdrawn by Mr.P.Sundararaj, the proceedings of the Joint Director of Collegiate Education, Tirunelveli dated 04.04.2000, refusing to approve the appointment of Mr. Jebakar is not justified in law when particularly, this Court refused to grant any positive order in his favour in W.P.No. 1984 of 2001.

14. That apart, I am of the considered opinion that Mr.P. Sundararaj cannot be appointed as Lecturer in Economics Department giving retrospective effect from 01.10.1997 as there was no approved permanent vacancy on that day. Hence, he is not entitled to be appointed with effect from 01.10.1997, but only with effect from 28.02.2001, on which date a permanent vacancy arose due to the retirement of Linson Mark.

15. For the reasons stated above, all the writ petitions are allowed and the prayers sought for by the petitioners are granted accordingly and consequently, the respondents are directed to regularise the services of Mr.P.Sundararaj with effect from 28.02.2001, and to approve the appointments of Ms.Ananthy and Mr. Jebakar with effect from 28 .10.1997 and 08.06.1998 respectively, and fix their seniority accordingly. No costs.

Dpn/-

To:

1. The Director,
Directorate of Collegiate Education,
Chennai - 600 006.

2. The Joint Director,
Directorate of Collegiate Education,
Tirunelveli,
Nellai Kattabomman District.

3. The Registrar,
Manonmanium Sundaranar University,
Tirunelveli.

4. The Correspondent / Secretary,
Scoot Christian College,
Nagercoil,
Kanyakumari District.

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